

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
JOHN H. FALLS
UST Facility at 7376 Rockfish Valley Highway, Afton, VA
Facility Identification No. 6-002188**

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code " 62.1-44.15 (8a) and 8(d) between the State Water Control Board and John H. Falls to resolve certain violations of the State Water Control Law and regulations at John H. Falls' Underground Storage Tank Facility located at 7376 Rockfish Valley Highway in Afton, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **ABoard@** means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code " 10.1-1184 and 62.1-44.7.
2. **ACode@** means the Code of Virginia (1950), as amended.
3. **AUST@** means underground storage tank.
4. "Mr. Falls" means John H. Falls, the UST owner within the meaning of Virginia Code ' 62.1-44.34:8.
5. **ADepartment@** or "DEQ" means the Department of Environmental Quality, an agency of the

Commonwealth of Virginia as described in Code ' 10.1-1183.

6. **ADirector@** means the Director of the Department of Environmental Quality.
7. **AFacility@** means the retail gasoline station and USTs owned and operated by Mr. Falls located at 7376 Rockfish Valley Highway, Afton, Virginia. The Facility's USTs are further identified by UST numbers: A, B, 3, 4, 5 & 6.
8. **AOrder@** means this document, also known as a Consent Special Order.
9. **ARegional Office@** means the Valley Regional Office of the Department.
10. **ARegulation@** means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "Sti-P3 tank" means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-60, required that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Mr. Falls is the owner of the USTs at this Facility within the meaning of Virginia Code ' 62.1-44.34:8.
3. On June 3, 1997, DEQ staff conducted an informal inspection at the Facility. The inspection revealed that spill prevention was not installed on the USTs and that the status of overfill protection, cathodic protection and release detection were unknown. It also revealed that the Department had not received a notification form (7530) for the USTs at the Facility.
4. On June 11, 1997, DEQ staff sent a letter to Mr. John W. Falls, (prior UST owner, deceased, August 1998) requesting that he submit a completed notification form (7530) for the USTs at the Facility. It also requested that he submit documentation confirming that spill prevention, overfill protection and cathodic protection had been installed and that release detection was being performed on the USTs at the Facility. The letter requested a response by July 25, 1997. The Department has no record of receiving any response.

5. On November 17, 1997, DEQ staff sent another letter to Mr. John W. Falls requesting that he complete and submit an enclosed notification form (7530) for the USTs at the Facility. It also requested that he submit documentation confirming the Facility's compliance with the Regulation, specifically that spill prevention, overfill protection and cathodic protection had been installed and that release detection was being performed on the USTs at the Facility. The letter requested a response by December 14, 1997. The Department has no record of receiving any response.
6. On February 12, 1998, DEQ staff sent another letter to Mr. John W. Falls requesting that he complete and submit an enclosed notification form (7530) for the USTs at the Facility. It also requested that he submit documentation confirming the Facility's compliance with the Regulation, specifically that spill prevention, overfill protection and cathodic protection had been installed and that release detection was being performed on the USTs at the Facility. The letter requested a response by March 15, 1998.
7. On March 19, 1998, the Department received a completed notification form (7530), signed by Mr. John W. Falls, for USTs at the Facility. It indicated that the USTs did not have overfill protection, spill prevention or cathodic protection installed. It did indicate that Inventory Control was being used as a release detection method.
8. On June 8, 1998, DEQ staff conducted another informal inspection at the Facility. The inspection revealed that spill prevention, overfill protection and cathodic protection had not been installed on the USTs and that it was unknown whether or not release detection was not being performed on the USTs.
9. Based on information in the Facility file, Mr. John W. Falls died during August 1998 and bequeathed the Facility to his son, Mr. Falls. Mr. Falls was declared executor of Mr. John W. Falls' estate in November 1999. Mr. Falls received possession of the Facility in February 1999.
10. On December 23, 1998, Mr. Falls voluntarily stopped pumping gasoline in order to comply with the Regulation and scheduled tank tightness tests for the USTs.
11. On January 25, 1999, Tanknology-NDE, a UST service provider, performed tank tightness tests on the USTs and associated piping at the Facility. The USTs and piping passed the test procedure.
12. On February 10, 1999, the Department received a completed notification form (7530), signed by Mr. Falls, indicating that he was the new owner of the USTs.

13. On March 17, 1999, DEQ staff conducted a complaint investigation at the Facility, after receiving an anonymous telephone call stating that the Facility was pumping and selling gasoline. The investigation revealed that the Facility was pumping and selling gasoline out of the USTs which did not have spill prevention, overfill protection or cathodic protection installed, in violation of the Regulation. DEQ staff instructed Mr. Falls that he could not continue to use the USTs while they did not comply with the Regulation.
14. Both overfill protection and spill prevention were installed on the USTs identified as A and B, during March 1999, after the March 17, 1999 complaint investigation.
15. On February 15, 2000, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. Release detection was not being performed on the USTs in apparent violation of 9 VAC 25-580-60 ¶ 5 and 9 VAC 25-580-140 ¶ 1.;
 - b. USTs #3, 4, 5 & 6 had not been upgraded with spill prevention or overfill and cathodic protection in apparent violation of 9 VAC 25-580-60 ¶ 2 & 4.;
 - c. USTs #A & B had not been upgraded with cathodic protection in apparent violation of 9 VAC 25-580-60 ¶ 2. b.;
 - d. The piping associated with USTs #A & B had not been upgraded with cathodic protection in apparent violation of 9 VAC 25-580-60 ¶ 3.; and,
 - e. The notification form submitted on February 9, 1999, did not correctly identify all USTs on site. Additionally, the capacities and materials of the USTs reported during the inspection conflict with those reported on the notification form. This is an apparent violation of 9 VAC 25-580-70 ¶ A.

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 00-02-VRO-19) to Mr. Falls on February 28, 2000, for these apparent violations of the Regulations. The letter requested that Mr. Falls respond by March 13, 2000, and included a Letter of Agreement (LOA) which outlined corrective actions required to return the Facility to compliance.

16. On March 13, 2000, the Department received a copy of the LOA signed by Mr. Falls on March 11, 2000. By signing and returning the LOA to the Department, Mr. Falls agreed to bring the Facility into compliance with the Regulation by June 5, 2000, and to submit documentation verifying compliance.

17. On July 24, 2000, the DEQ received closure documentation confirming that USTs # 3, 4, 5 & 6 had been properly closed. This resolved the apparent violation noted in paragraph 15.b. of this section. Contamination was found during the UST closure and Pollution Complaint (PC) number 00-6141 was opened.
18. PC case 00-6141 is still active and as of April 1, 2002, the Facility is in compliance with the corrective action schedule.
19. On January 30, 2001, DEQ staff received a copy of a Cathodic Protection Evaluation Survey for USTs A & B. The Survey was conducted on January 11, 2001 by Tanknology, a UST service provider, and found that the USTs were not cathodically protected and further indicated that no cathodic protection system existed on the USTs or piping at the Facility.
20. On February 2, 2001, DEQ staff received a letter from B-Low Services of Manhattan, Kansas, a UST release detection service provider, confirming that Mr. Falls had contracted with them to provide Release Detection on USTs A & B by using a method known as Statistical Inventory Reconciliation (SIR).
21. DEQ staff attempted to contact Mr. Falls on February 5, March 26 & 27 and April 9 & 12, 2001, but he could not be reached. On April 16, 2001, DEQ staff spoke with Ms. Darlene Mawyer, Mr. Falls' daughter, and informed her that if cathodic protection was not installed on USTs #A & B, a Notice of Violation would be issued to Mr. Falls.
22. On May 8, 2001, DEQ staff received a letter from B-Low Services, a UST release detection service provider, indicating that although it had a contract with Mr. Falls to provide Release Detection for the USTs, it had not received any data to perform the SIR for Release Detection. This was because the previous tenants of the Facility and Mr. Falls failed to supply this information to B-Low Services. These tenants vacated the Facility and it was then closed for remodeling during the months of May, June and July of 2001. The Facility reopened in August 2001 with new tenants. A written lease does not exist between Mr. Falls or either tenant.
23. On June 6, 2001, DEQ staff sent a Warning Letter (No. 01-06-VRO-6) to Mr. Falls for these apparent continuing violations of the Regulations, 9 VAC 25-580-60 (UST upgrade requirements), 9 VAC 25-580-70 (UST notification requirements), 9 VAC 25-580-140 (UST release detection requirements) on USTs #A and #B. The letter requested that Mr. Falls respond to the Department in writing by June 18, 2001.

24. On June 18, 2001, DEQ staff received a response letter from Mr. Falls. The letter indicated that Mr. Falls had requested an estimate from Tanknology, his UST service provider, for installation of cathodic protection. It also stated that he was trying to determine a way to provide inventory data to B-Low Services, his UST release detection service provider, for SIR calculations and hoped to have some data to them by the end of June 2001. "Some" data would not be enough to perform a valid release detection method. It should be noted that, at that time, the Facility was being renovated and Mr. Falls did not have, nor did he know when he would have, a new tenant. This letter also informed the DEQ that Mr. Falls had inherited the Facility with the USTs from his father Mr. John W. Falls in August 1998. This letter also referenced PC number 00-6141, stating that, although Mr. Falls had spent the money to remediate the release, he had not been reimbursed by the DEQ for the remediation expenditures.
25. On July 10, 2001, DEQ staff received a copy of a signed contract, made between Mr. Falls and Tanknology, his UST service provider, to install a cathodic protection system on the USTs at the Facility.
26. On January 18, 2002, DEQ staff received release detection report results for UST #A, but not for UST #B. The report did not include release detection results for UST #B as no data was submitted to B-Low Services, his UST release detection service provider. DEQ staff learned that the reason for this was because the UST was not in service. Additionally, DEQ staff determined that cathodic protection had not been installed on either UST.
27. On January 23, 2002, DEQ staff conducted a site visit to witness an evaluation of the USTs before the installation of the cathodic protection system. Due to the presence of permanently installed submerged fill pipes on the USTs, the evaluation could not be performed. The presence of these pipes also defeated the purpose of the overfill protection method installed on the USTs. Staff also noted that release detection was not being performed on UST #B. DEQ staff verbally notified Mr. Falls of these problems and apparent violations of the Regulation.
28. On January 25, 2002, DEQ staff conducted a site visit to determine if the USTs had been returned to service after having been emptied on January 23, 2002 for evaluation purposes. Staff observed that the USTs had been refilled with product and the Facility was pumping and selling gasoline.
29. On February 7, 2002, DEQ staff issued a Notice of Violation (No. 02-02-VRO-1) to Mr. Falls, for these apparent continuing violations of the Regulations 9 VAC 25-580-60 (UST upgrade requirements), 9 VAC 25-580-70 (UST notification requirements), 9 VAC 25-

580-140 (UST release detection requirements) on USTs #A and #B. The Notice of Violation requested that Mr. Falls respond to the Department by February 21, 2002.

30. On February 22, 2002, Mr. Falls' daughter, contacted DEQ staff to inform them that a contractor had been retained to perform the necessary alterations to the USTs, but a date for the performance of the work had not been established.
31. On April 1, 2002, Woodson Excavating, Inc. performed modifications to the USTs necessary for the performance of a petroscope internal evaluation.
32. On April 18, 2002, Tanknology performed a petroscope internal evaluation of the USTs required prior to the addition of cathodic protection. UST #B failed the evaluation and is not a candidate for the cathodic protection upgrade. UST #A evaluation was not completed due to an obstruction in the tank. Further investigation is required for UST #A.
33. On June 20, 2002, Mr. Falls registered both USTs with the DEQ as being temporarily closed. Mr. Falls has indicated that he has ceased dispensing petroleum from the USTs. A site visit performed by DEQ staff on June 5, 2002 confirmed this.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code ' ' 62.1-44.15 (8a) and (8d), orders Mr. Falls and Mr. Falls agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Mr. Falls shall perform the actions described in Appendix A to the Order.
2. Mr. Falls shall pay a civil charge of \$7,227.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to ATreasurer of the Commonwealth of Virginia@and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

3. Mr. Falls shall also include his Social Security Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Falls, for good cause shown by Mr. Falls, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Mr. Falls admits the jurisdictional allegations in the Order.
4. Mr. Falls consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Falls declares he has received fair and due process under the Virginia Administrative Process Act, Code ' ' 9-6.14:1 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. Falls to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Falls shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. Falls must show that such circumstances

resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Falls shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. The reasons for the delay or noncompliance;
- b. The projected duration of such delay or noncompliance;
- c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Mr. Falls intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Falls. Notwithstanding the foregoing, Mr. Falls agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Mr. Falls petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Mr. Falls has satisfied all the requirements of the Order is a ~~Ac~~case decision@within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to Mr. Falls.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Falls from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. Falls voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Mr. Falls:

Date: _____

By: _____

John H. Falls

Title: Owner

Commonwealth of Virginia, City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by

Mr. John H. Falls.

Date

My commission expires:

Notary Public

Appendix A
John H. Falls (Falls Grocery)
UST Facility at 7376 Rockfish Valley Highway, Afton, VA

A. By July 1, 2002, for both USTs #A and #B, Mr. Falls shall:

1. Cease dispensing gasoline from both USTs.
2. Disconnect electrical supply to all dispensers and secure all dispensing nozzles.

B. By September 20, 2002, for both USTs #A and #B, Mr. Falls shall:

1. Remove all petroleum from both USTs.
2. Leave all vent lines open and functioning.
3. Remove all pumps and dispensers associated with the USTs and cap any associated product lines.
4. Secure the fill pipes to the USTs to prevent any unauthorized access.
5. Obtain the necessary building permit and inspections for temporary UST closure from the local building official in accordance with the Virginia Uniform Statewide Building Code. Submit a copy of this to the DEQ.

C. By January 1, 2003, for both USTs #A and #B, Mr. Falls shall:

1. Submit a copy of a signed contract for proper closure of both USTs to the DEQ.

D. By June 1, 2003, for both USTs #A and #B, Mr. Falls shall:

1. Permanently close both USTs in accordance with the requirements of 9 VAC 25-580-320 and 330.
2. Submit required closure documentation for both USTs to the DEQ.